

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION)
OF THE FUEL ADJUSTMENT CLAUSE OF)
LOUISVILLE GAS AND ELECTRIC)
COMPANY FROM NOVEMBER 1, 2004)
THROUGH OCTOBER 31, 2006)

CASE NO. 2006-00510

MOTION OF LOUISVILLE GAS AND ELECTRIC COMPANY TO STRIKE
KENTUCKY INDUSTRIAL UTILITIES CUSTOMERS, INC.'S
FIRST SET OF DATA REQUESTS QUESTION NO. 14

Louisville Gas and Electric Company ("LG&E") hereby moves the Public Service Commission ("Commission") to strike Question No. 14 of Intervenor Kentucky Industrial Utility Customers, Inc.'s ("KIUC") First Set of Data Requests to LG&E ("Question No. 14") because Question No. 14 violates the express written terms of the settlement agreement approved by the Commission in Case No. 2006-00172.

In support of this Motion, LG&E states as follows:

During Duke Energy Kentucky's ("DEK") most recent base rate proceeding before this Commission (Case No. 2006-00172), DEK and the intervenors therein reached a written unanimous settlement agreement ("DEK Settlement Agreement").¹ KIUC's counsel in this proceeding signed the DEK Settlement Agreement in Case No. 2006-00172. The DEK Settlement Agreement expressly states:

33. Admissibility and Non-Precedential Effect. Neither the Settlement Agreement nor any of the terms shall be admissible in any court or Commission except insofar as such court or Commission is addressing litigation arising out of the implementation of the terms herein or the approval of this

¹ *In the Matter of Application of Union Light, Heat and Power Company d/b/a Duke Energy Kentucky for an Adjustment of Electric Rates*, Case No. 2006-00172, Order at Appx. B ("DEK Settlement Agreement").

Settlement Agreement. This Settlement Agreement shall not have any precedential value in this or any other jurisdiction.

34. No Admissions. Making this Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party hereto that any computation, formula, allegation, assertion or contention made by any other Party in these proceedings is true or valid. Nothing in this Settlement Agreement shall be used or construed for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of a Party.²

Question No. 14 should be stricken because it violates the terms of the written unanimous DEK Settlement Agreement approved by the Commission. The document referenced in, and attached to, Question No. 14 is a handout from an informal conference in Case No. 2006-00172 for the purpose of discussing the implementation of the then-approved DEK Settlement Agreement. As the above-quoted portions of the DEK Settlement Agreement show, neither the DEK Settlement Agreement nor any of its terms are admissible in any other case, except for the purpose of addressing litigation arising out of its implementation. The DEK Settlement Agreement also states that it does “not have any precedential value in this or any other jurisdiction.” The DEK Settlement Agreement further states that the making of the DEK Settlement Agreement could not be deemed to be an admission by any party thereto that any assertion or contention by any other party was true or valid, and that nothing in the DEK Settlement Agreement could be used “for any purpose to imply, suggest or otherwise indicate that the results produced through the compromise reflected herein represent fully the objectives of a Party.” By using Question No. 14 to introduce language into this proceeding from the informal conference to implement the DEK Settlement Agreement, KIUC’s counsel is violating both the letter and spirit of the DEK Settlement Agreement, for which cause the Commission should strike Question No. 14.

² DEK Settlement Agreement at 9.

WHEREFORE, LG&E respectfully moves the Commission to enter an order striking Question No. 14 of KIUC's First Set of Data Requests to LG&E.

Dated: February 23, 2007

Respectfully submitted,



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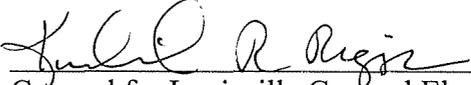
Counsel for Louisville Gas and Electric
Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion to Modify Procedural Schedule was served, via United States mail, postage prepaid, and electronic email to the following persons on the 23rd day of February 2007:

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